



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,879	06/27/2003	Lieven Stuyver	BJS-2551-123	5237
23117 7590 05/28/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
PENG, BO				
ART UNIT		PAPER NUMBER		
16-48				
MAIL DATE		DELIVERY MODE		
05/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/606,879

**Applicant(s)**

STUYVER ET AL.

**Examiner**

BO PENG

**Art Unit**

1648

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 8 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 12 March 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): the anticipation rejection of claims 15 and 16.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 15-17, 28 and 29.  
Claim(s) withdrawn from consideration: 18-27, 30-32 and 34.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

BO PENG  
Patent Examiner  
Art Unit: 1648

/Zachariah Lucas/  
Primary Examiner, Art Unit 1648

Entry of the proposed amendments does not overcome the 103 rejection of Claims 15-17, 28 and 29. Applicant argues that none of the cited references teaches the method of detecting HBV genotype A using probe SEQ ID NO:77. This argument is not persuasive. The previous Office actions have provided the reasons on the basis that the cumulative teachings of the references renders the claimed features obvious to those of ordinary skill in the art. The appellant's pointing out deficiencies in each of the references individually is therefore not persuasive in overcoming the rejection. The rejection is maintained for the reasons set forth in the previous Office action. Specifically, the cited art describes same HBV target and a line probe assay (LiPA) as the instant invention. Applicant's elected SEQ ID NO: 77 as HBV genotype A specific target sequence is corresponding to codons 142-147 of HBsAg. Ashton-Rickardt teaches that □ determine region of HBV genotype A is located between amino acid residues 138-147. Thus, as indicated by the previous office action, the target site of the instant method is described by Ashton-Rickardt, and is known and interested in the art. Moreover, Maertens teaches a line probe assay (LiPA) for genotyping viruses, such as HCV, HIV and HBV, present in biological samples (see P. 25). McDonough teaches a method of detecting HBV genotype A. Both Maerten and MaDonough teach all active steps of the instant claims. Thus, the cited art describes same HBV target and process as the instant claims. Although the cited references do not explicitly teach the claimed primers, however, once the specific HBV target is known, it is within one of ordinary skill in the art to make the claimed primers or equivalent thereof to successfully hybridize the HBV target. Absence any evidence to the contrary, and based upon the teachings of the prior art, there would have been a reasonable expectation of success in utilizing Maertens LiPA to detect HBV genotype A at of □ determine region of HBV as taught by McDonough and Ashton-Rickardt. Therefore, the rejection is maintained.

The 102(b) rejection of Claims 15 and 16 is dropped.